



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE  
Drug Enforcement Administration**

**Phillip O. Rawlings, Jr., M.D.; Decision and Order**

On March 8, 2018, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Phillip O. Rawlings, Jr., M.D. (Registrant), of Mobile, Alabama. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration No. FR0024997 on the ground that he has "no state authority to handle controlled substances." Order to Show Cause, Government Exhibit (GX) 8, at 1 (citing 21 U.S.C. 824(a)(3)). For the same reason, the Order also proposed the denial of any of Registrant's "applications for renewal or modification of such registration and any applications for any other DEA registrations." *Id.*

Regarding the Agency's jurisdiction, the Show Cause Order alleged that Registrant holds DEA Certificate of Registration No. FR0024997, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules II through V at the registered address of Providence Family Physicians, 8833 Cottage Hill Road, Mobile, Alabama. *Id.* The Order also alleged that this registration was set to expire by its terms on April 30, 2018. *Id.*

The substantive ground for the proceeding set forth in the Show Cause Order is that Registrant is "currently without authority to practice medicine or handle controlled substances in the State of Alabama, the state in which [he is] registered with the DEA" because Registrant's Alabama Medical License and Alabama Controlled Substances Certificate have been in "Inactive-By Request" status since December 31, 2016. *Id.* As a consequence, the Order alleged that "DEA must revoke your DEA registration." *Id.* at 2.

The Show Cause Order notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Order also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

On April 26, 2018, my office received the Government's Second Request for Final Agency Action (SRFAA)<sup>1</sup> describing Diversion Investigators' attempts to serve the Show Cause Order and seeking a final order revoking Registrant's registration. SRFAA, at 2, 6. The Government also submitted a Certification of Registration History, which was sworn to on December 28, 2017 by the Associate Chief of the Registration and Program Support Section. GX 1. In that Certification, she stated that DEA Registration No. FR0024997 "expires on April 30, 2018." *Id.* at 1. The Associate Chief further stated that "Phillip O. Rawlings, Jr., M.D., has no other pending or valid DEA registration(s) in Alabama." *Id.* According to the Agency's current registration records for Registrant, of which I take official notice,<sup>2</sup> DEA Registration No.

---

<sup>1</sup> On January 10, 2018, the Government submitted a Request for Final Agency Action seeking to revoke Registrant's same DEA registration based on an October 31, 2017 Order to Show Cause. GX 6. In that Request, the Government represented that Registrant did not request a hearing and "ha[d] not otherwise corresponded or communicated with DEA regarding the Order served on him . . . within 30 days of receipt of the Order." *Id.* at 1-2. However, on February 6, 2018, the then-Acting Administrator issued an Order noting that, "although the Government is clearly in possession of information suggesting that Registrant now lives in California, it has offered no explanation for why it did not attempt to obtain Registrant's address from the Board of Medical Examiners and serve Registrant at that address." GX 7, at 1. As a result, the then-Administrator denied the Government's Request for Final Agency Action without prejudice. *Id.* at 2. *See also* SRFAA, at 1-2. By that time, the December 26, 2017 hearing date listed in the 2017 Show Cause Order had passed. SRFAA, at 2 n.1. As a result, the Agency issued the pending Show Cause Order on March 8, 2018, with a new hearing date of April 24, 2018. *Id.*; GX 8, at 1. It is this new Show Cause Order for which the Government now seeks final agency action.

<sup>2</sup> Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Registrant is "entitled on timely request to an opportunity to show to the contrary." 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). To allow Registrant the opportunity to refute the facts of which I take official notice, Registrant may file a motion for reconsideration within 15 calendar days of service of this order which shall commence on the date this order is mailed.

FR0024997 expired on April 30, 2018, and he has not submitted an application to renew his registration or for any other registration in the State of Alabama. Thus, I find that Registrant's registration expired on April 30, 2018, and that there is no application upon which to act.<sup>3</sup>

DEA has long held that “if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.” *Donald Brooks Reece II, M.D.*, 77 FR 35054, 35055 (2012) (quoting *Ronald J. Riegel*, 63 FR 67312, 67133 (1998)); see also *Greg N. Rampey, D.O.*, 83 FR 42696, 42697 (2018). “Moreover, in the absence of an application (whether timely filed or not), there is nothing to act upon.” *Reece*, 77 FR at 35055, *Rampey*, 83 FR at 42697. Accordingly, because Registrant has allowed his registration to expire and has not filed an application to renew his registration or for any other registration in Alabama, this case is now moot and will be dismissed.

---

<sup>3</sup> As already noted, my Office received the Government's Second Request for Final Agency Action on April 26, 2018. This filing arrived in my office too late for me to issue a final decision and order before the registration would expire on April 30, 2018. DEA regulation 21 CFR 1316.67 requires that I issue a final order that takes effect not less than 30 days from the date of publication in the Federal Register unless the public interest necessitates an earlier effective date. The record before me fails to include facts supporting a finding that “the public interest in the matter necessitates an earlier effective date.” 21 CFR 1316.67. Thus, even if I had submitted a final order in this case to the Federal Register on the same day (April 26, 2018) that my office received the SRFAA to revoke Registrant's registration, I could not have issued an order that would have taken effect by April 30, 2018 because the Federal Register would not have been able to publish it 30 days before the registration's April 30, 2018 expiration. And as the Agency has previously noted, there is no point in issuing a ruling on a Show Cause Order where, as here, that ruling would constitute an advisory opinion subject to vacation on judicial review. See, e.g., *Josip Pasic, M.D.*, 82 FR 24146, 24147 (2017) (“As the requested factual findings and legal conclusions would be subject to vacation on judicial review, there is no point in making them.”).

## **Order**

Pursuant to 28 CFR 0.100(b) and the authority thus vested in me by 21 U.S.C. 824(a), I order that the Order to Show Cause issued to Phillip O. Rawlings, Jr., M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: September 26, 2018.

**Uttam Dhillon,**

*Acting Administrator.*

[FR Doc. 2018-22421 Filed: 10/12/2018 8:45 am; Publication Date: 10/15/2018]